

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDWIN DIAZ, on behalf of himself and :  
all others similarly situated, :  
: Plaintiffs, : Case No. 1: 18-cv-07953-KPF  
v. :  
THE KROGER CO., :  
: Defendant. :

**AFFIDAVIT OF ANDREW WHITING**

COUNTY OF Hamilton )  
 ) SS.:  
STATE OF OHIO )

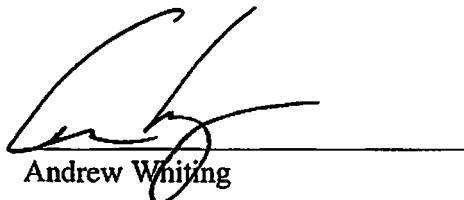
I, Andrew Whiting, first having been duly sworn, depose and state as follows:

1. I am over the age of 18 and of sound mind, and have personal knowledge of the matters set forth herein.
2. I am the Group Product Design Manager for The Kroger Co. ("Kroger") and have held that position for 1 year.
3. Kroger is an Ohio corporation with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio.
4. Kroger is a food and grocery retailer that operates Kroger stores.
5. Kroger also owns and operates the website with the internet address of [www.kroger.com](http://www.kroger.com).
6. Kroger does not operate any of its retail stores in the State of New York.

7. The closest Kroger store in relation to Plaintiff's home in Bronx, New York is in Hayes, Virginia. Attached as Exhibit "A" is a print out from the Kroger website indicating the Hayes, Virginia store is approximately 275 miles from Plaintiff's home.
8. Prior to the inception of this lawsuit, Kroger has undertaken to comply with the Website Content Accessibility Guidelines ("WCAG") and is compliant with WCAG 2.0 standards.
9. After Kroger was served with the Complaint in this action, I personally reviewed the Complaint and understand all the alleged deficiencies with the Kroger website alleged in the Complaint (and First Amended Complaint).
10. I have personally made sure that all such deficiencies alleged in the Complaint and First Amended Complaint have been remedied and that no such barriers to access, as alleged, still exist with [www.Kroger.com](http://www.Kroger.com).
11. Since [www.Kroger.com](http://www.Kroger.com) is now compliant with the WCAG 2.0 standards, there is no reason for Kroger to undo the changes that have been made.
12. Kroger is committed to continuing to keep its website up to date and compliant with all applicable standards to make the website as accessible to all as possible.
13. Kroger does not intend to let its website fall behind the current standards and will continue to keep the website up to date with any new standards because it does not wish to be involved in any further, unnecessary litigation and because of its commitment to being accessible to as many of its patrons, and as much of the public, as possible.

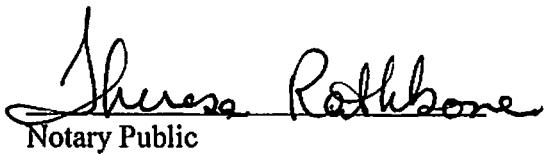
Executed this 17 day of January, 2019.

Further affiant sayeth naught.



Andrew Whiting

Sworn to before me this  
17 day of January, 2019.



Theresa Rathbone  
Notary Public



THERESA RATHBONE  
Notary Public, State of Ohio  
My Commission Expires 08-12-2023